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Letter Ruling 79-35: Withholding from Bereavement

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October 2, 1979

You request a ruling on behalf of the ***** ("Association") regarding the Massachusetts tax consequences of its collective bargaining agreement with the ***** Union. The Association is a non-profit corporation organized under the laws of Massachusetts, which represents forty corporations engaged in the business of manufacturing dresses.

Under the collective bargaining agreement, an employee of a corporation belonging to the Association receives \$75.00 if there is a death in the employee's immediate family. This so called "bereavement pay" is a flat sum and is payable whether or not the employee takes time off. There is no specification in the agreement as to the purpose of the payment.

Income is subject to withholding taxes under Chapter 62B if it is taxable under Massachusetts personal income tax law and if it is wages for federal withholding purposes. The federal definition of wages for withholding purposes, which is adopted by Massachusetts General Laws Chapter 62B, Section 1, states that "'wages' means all remuneration...for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash..." Internal Revenue Code, Section 3401(a). The Internal Revenue Service, in Revenue Ruling 79-110 held that payments made to employees under a sick leave plan for absences due to the death of a relative were wages for purposes of F.I.C.A. and F.U.T.A. and that such payments were subject to income tax withholding.

While the plan described above and the plan in the collective bargaining agreement are distinguishable in that the latter plan does not require the employee to be absent to receive his bereavement pay, the intent of the plans are the same, to enable the employee to better withstand the financial burdens which result from a death in the immediate family.

Based on the foregoing it is ruled that the bereavement pay which an employee receives upon a death in his immediate family is taxable as income under Chapter 62 and is subject to Massachusetts income tax withholding under Chapter 62B.

Very truly yours,

/s/L. Joyce Hampers

L. Joyce Hampers
Commissioner of Revenue

LJH/RSF/jmcd

LR 79-35